

APPEAL NO. 033062  
FILED JANUARY 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 23, 2003. The hearing officer determined that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter from July 12 through October 10, 2003, and that the claimant's average weekly earnings to be used to determine the monthly SIBs rate for the fourth quarter is \$157.65. The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case was whether the claimant's underemployment was a direct result of his impairment and whether the claimant returned to work in a job relatively equal to his ability to work such that he satisfied the good faith requirement pursuant to Rule 130.102(d)(1). It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_; that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; and that the qualifying period for the fourth quarter was from March 30 through June 28, 2003.

Regarding the "direct result" criterion, the Appeals Panel has consistently stated that an injured employee need not establish that the impairment is the only cause of the unemployment or underemployment but only that it is a cause, and that the direct result requirement is "sufficiently supported by evidence that an injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury." Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In the instant case, the hearing officer was persuaded by the claimant's testimony and his medical documentation that the claimant had a serious injury with lasting effects and that the impairment from his compensable injury prevented him from returning to his prior job. We find no error in the hearing officer's finding that the claimant's underemployment during the qualifying period was a direct result of his impairment from the compensable injury.

Regarding the "good faith" criterion, Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The Appeals Panel has held

that whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. It is undisputed that during the qualifying period in dispute the claimant was released to sedentary work with restrictions. The hearing officer determined that the claimant was unable to return to his prior employment as an aircraft mechanic, and that the claimant returned to work in a position that was relatively equal to the claimant's ability to work as a cab driver. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier contends that the hearing officer erred in determining the claimant's average weekly wage. The carrier argues that the claimant under-reported his wages; specifically that the claimant did not report tips he received as a cab driver. The amount of those wages earned during the qualifying period in dispute presented a question of fact for the hearing officer to decide. Clearly, the evidence, both testimonial and documentary, is subject to varying inferences and conclusions about its credibility and another hearing officer may have found that the claimant's evidence was not persuasive on the amount of his wages. Section 410.165(a), however, provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Nothing in our review of the record indicates that the hearing officer's determination on this issue is so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge